

Notice of Allowability

Application No.

10/552,165

Examiner

WALTER B. AUGHENBAUGH

Applicant(s)

STEFFL ET AL.

Art Unit

1782

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to Amendment filed December 30, 2010.
2. ☒ The allowed claim(s) is/are 1,3-17 and 19-21.
3. ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some* c) ☐ None of the:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☒ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).
- * Certified copies not received: _____.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.

THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.

4. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
5. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
- (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
- 1) ☐ hereto or 2) ☐ to Paper No./Mail Date _____.
- (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date _____.
- Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).**
6. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

Attachment(s)

- | | |
|--|---|
| 1. <input type="checkbox"/> Notice of References Cited (PTO-892) | 5. <input type="checkbox"/> Notice of Informal Patent Application |
| 2. <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 6. <input checked="" type="checkbox"/> Interview Summary (PTO-413),
Paper No./Mail Date <u>3/11/11</u> . |
| 3. <input type="checkbox"/> Information Disclosure Statements (PTO/SB/08),
Paper No./Mail Date _____ | 7. <input checked="" type="checkbox"/> Examiner's Amendment/Comment |
| 4. <input type="checkbox"/> Examiner's Comment Regarding Requirement for Deposit
of Biological Material | 8. <input checked="" type="checkbox"/> Examiner's Statement of Reasons for Allowance |
| | 9. <input type="checkbox"/> Other _____. |

EXAMINER'S AMENDMENT

Acknowledgement of Applicant's Amendments

1. The amendments made in the claims in the Amendment filed December 30, 2010 have been received and considered by Examiner.
2. An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it MUST be submitted no later than the payment of the issue fee.
3. In the claims:

Cancel claim 18.

Withdrawn method claim 18 has been cancelled because of 35 U.S.C. 112 issues raised by the language of the claim. For example, the phrase "while utilizing a barrier screw and/or a fusion pump" is indefinite (how are either of these devices being used?), and also appears to be contrary to the disclosure, which discusses using a barrier screw "prior to" the grafting step (paragraph 0030 of the published application), and not during the grafting step (as is indicated by "while utilizing...") (thus raising an issue under 35 U.S.C. 112, first paragraph).

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4. Authorization for the examiner's amendment below was given in a telephone interview with Keith G. Haddaway on March 11, 2011.

5. The application has been amended as follows:

In the claims:

In claim 14, lines 2-3, replace “, related to constituent (A)” with --for 100 weight parts of constituent (A)--.

In claim 15, lines 2-3, replace “, related to constituent (A)” with --for 100 weight parts of constituent (A)--.

In claim 16, lines 2-3, replace “, related to constituent (A),” with --for 100 weight parts of constituent (A),--.

In claim 16, line 3, between “(A),” and “selected”, insert --wherein the additive is--, and delete “of” in line 3.

In claim 19, line 2, replace “cross-liked” with --cross-linked--.

In claim 20, line 2, replace “, related to constituent (A)” with --for 100 weight parts of constituent (A),--.

In claim 21, replace “the preceding claims” with --claims 2-16, 19 or 20--.

Allowable Subject Matter

6. Claims 1, 3-17 and 19-21 are allowed.

Reasons for Allowance

7. The following is an examiner's statement of reasons for allowance:

In regard to independent claim 1, the prior art of record fails to teach or suggest the claimed tubes having the claimed structural and compositional limitations. As Applicant argues, one of ordinary skill in the art would not have been motivated to have looked to Yui (USPN 4,244,910) for guidance for how Stachowiak (USPN 6,361,842) may be modified since Yui is not directed to silane crosslinked compositions (or to crosslinked compositions), and furthermore, for the same reason, one of ordinary skill in the art would not have had any reasonable expectation of success in combining the references as proposed in the 35 U.S.C. 103 rejection.

Conclusion

8. Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Walter B. Aughenbaugh whose telephone number is (571) 272-1488. The examiner can normally be reached on Monday-Thursday from 9:00am to 7:30pm.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rena Dye, can be reached on (571) 272-3186. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Walter B Aughenbaugh /

Primary Examiner, Art Unit 1782

03/13/11